

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 2, 2001

1:12 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh

MEMBERS ABSENT

Representative Scott Ogan, Vice Chair

COMMITTEE CALENDAR

HOUSE BILL NO. 3

"An Act relating to deposits to the Alaska permanent fund from mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), federal mineral revenue sharing payments received by the state from mineral leases, and bonuses received by the state from mineral leases, and limiting deposits from those sources to the 25 percent required under art. IX, sec. 15, Constitution of the State of Alaska; and providing for an effective date."

- MOVED HB 3 OUT OF COMMITTEE

HOUSE BILL NO. 132

"An Act relating to the possession or distribution of alcohol in a local option area; requiring liquor license applicants to submit fingerprints for the purpose of conducting a criminal history background check, and relating to the use of criminal justice information by the Alcoholic Beverage Control Board; providing for a review of alcohol server education courses by the Alcoholic Beverage Control Board every two years; and providing for an effective date."

- MOVED CSHB 132(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 158

"An Act relating to the criteria for the adoption of regulations and to the relationship between a regulation and its enabling statute; and providing for an effective date."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 3

SHORT TITLE:DEPOSITS TO THE PERMANENT FUND

SPONSOR(S): REPRESENTATIVE(S)ROKEBERG

Jrn-Date	Jrn-Page		Action
01/08/01	0024	(H)	PREFILE RELEASED 12/29/00
01/08/01	0024	(H)	READ THE FIRST TIME - REFERRALS
01/08/01	0024	(H)	STA, JUD, FIN
02/28/01	0473	(H)	COSPONSOR(S): MURKOWSKI, DAVIES,
02/28/01	0473	(H)	HUDSON
03/08/01		(H)	STA AT 8:00 AM CAPITOL 102
03/08/01		(H)	Heard & Held
03/08/01		(H)	MINUTE(STA)
03/09/01	0529	(H)	COSPONSOR(S): STEVENS
03/13/01	0558	(H)	STA RPT 4DP 2DNP 1NR
03/13/01	0558	(H)	DP: WILSON, STEVENS, JAMES, FATE;
03/13/01	0558	(H)	DNP: CRAWFORD, COGHILL; NR: HAYES
03/13/01	0558	(H)	FN1: (REV)
03/13/01		(H)	STA AT 8:00 AM CAPITOL 102
03/13/01		(H)	Moved Out of Committee
03/13/01		(H)	MINUTE(STA)
03/26/01		(H)	JUD AT 1:00 PM CAPITOL 120
03/26/01		(H)	Scheduled But Not Heard
04/02/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 132

SHORT TITLE:LIQUOR LICENSE APPLICANT CHECK/TRAINING

SPONSOR(S): JUDICIARY BY REQUEST

Jrn-Date	Jrn-Page		Action
02/19/01	0365	(H)	READ THE FIRST TIME - REFERRALS
02/19/01	0365	(H)	L&C, JUD, FIN
03/16/01		(H)	L&C AT 3:15 PM CAPITOL 17
03/16/01		(H)	Heard & Held

			MINUTE(L&C)
03/22/01		(H)	L&C AT 3:15 PM CAPITOL 17
03/22/01		(H)	Moved CSHB 132(L&C) Out of Committee
			MINUTE(L&C)
03/26/01	0725	(H)	L&C RPT CS(L&C) 1DP 6NR
03/26/01	0726	(H)	DP: ROKEBERG; NR: HALCRO, KOTT,
03/26/01	0726	(H)	CRAWFORD, HAYES, MEYER, MURKOWSKI
03/26/01	0726	(H)	FN1: ZERO(REV)
03/26/01	0726	(H)	FN2: INDETERMINATE(LAW)
03/26/01	0726	(H)	FN3: (COR)
03/26/01	0726	(H)	FN4: (ADM)
03/30/01		(H)	JUD AT 1:00 PM CAPITOL 120
03/30/01		(H)	<Bill Postponed>
04/02/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 158

SHORT TITLE:CRITERIA FOR REGULATIONS

SPONSOR(S): REPRESENTATIVE(S)MCGUIRE

Jrn-Date	Jrn-Page		Action
02/28/01	0463	(H)	READ THE FIRST TIME - REFERRALS
02/28/01	0463	(H)	JUD
02/28/01	0463	(H)	REFERRED TO JUDICIARY
03/07/01	0501	(H)	COSPONSOR(S): DYSON, FATE, ROKEBERG
03/12/01	0553	(H)	COSPONSOR(S): OGAN
03/16/01	0636	(H)	COSPONSOR(S): MURKOWSKI, WILSON
03/16/01		(H)	JUD AT 1:00 PM CAPITOL 120
03/16/01		(H)	<Bill Canceled>
03/22/01	0697	(H)	COSPONSOR(S): LANCASTER
03/30/01		(H)	JUD AT 1:00 PM CAPITOL 120
03/30/01		(H)	<Bill Postponed>
04/02/01		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

HEATHER M. NOBREGA, Staff
to Representative Norman Rokeberg
House Judiciary Standing Committee
Alaska State Legislature
Capitol Building, Room 118
Juneau, Alaska 99801

POSITION STATEMENT: Presented HB 132 on behalf of the House Judiciary Standing Committee.

DEAN J. GUANELI, Chief Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law
PO Box 110300
Juneau, Alaska 99811-0300

POSITION STATEMENT: Assisted with the presentation of HB 132 and answered questions.

DOUG GRIFFIN, Director
Alcoholic Beverage Control Board
Department of Revenue
550 West 7th Avenue, Suite 540
Anchorage, Alaska 99501-3510

POSITION STATEMENT: Assisted with the presentation of HB 132 and answered questions.

KACE McDOWELL
Cabaret Hotel Restaurant & Retailers Association (CHARR)
1111 East 80th Avenue
Anchorage, Alaska 99518

POSITION STATEMENT: Testified on Amendment 2 to CSHB 132(L&C).

ALVIA "STEVE" DUNNAGAN, Lieutenant
Division of Alaska State Troopers
Department of Public Safety
5700 East Tudor Road
Anchorage, Alaska 99507

POSITION STATEMENT: Testified in support of HB 132.

BLAIR McCUNE, Deputy Director
Public Defender Agency
Department of Administration
900 West Fifth Avenue, Suite 200
Anchorage, Alaska 99501-2090

POSITION STATEMENT: Testified on CSHB 132(L&C); urged caution regarding Amendment 1 and answered questions.

REPRESENTATIVE LESIL McGUIRE
Alaska State Legislature
Capitol Building, Room 418
Juneau, Alaska 99801

POSITION STATEMENT: Sponsor of HB 158.

DEBORAH BEHR, Assistant Attorney General
Legislation and Regulations Section
Civil Division (Juneau)
Department of Law (DOL)
PO Box 110300
Juneau, Alaska 99811-0300

POSITION STATEMENT: During discussion of HB 158, provided comments on the regulations process and offered assistance in investigating ways to amend the current process.

ROBERT B. STILES, President
Resource Development Council for Alaska, Inc.
121 West Fireweed Lane, Suite 250
Anchorage, Alaska 99503

POSITION STATEMENT: During discussion of HB 158, gave examples of problems with HB 158.

JANICE ADAIR, Director
Division of Environmental Health
Department of Environmental Conservation (DEC)
555 Cordova Street
Anchorage, Alaska 99501

POSITION STATEMENT: During discussion of HB 158, answered questions.

ACTION NARRATIVE

TAPE 01-52, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:12 p.m. Representatives Rokeberg, James, Coghill, Meyer, and Berkowitz were present at the call to order. Representative Kookesh arrived as the meeting was in progress.

HB 3 - DEPOSITS TO THE PERMANENT FUND

Number 0068

CHAIR ROKEBERG announced that the first order of business would be HOUSE BILL NO. 3, "An Act relating to deposits to the Alaska permanent fund from mineral lease rentals, royalties, royalty sale proceeds, net profit shares under AS 38.05.180(f) and (g), federal mineral revenue sharing payments received by the state from mineral leases, and bonuses received by the state from mineral leases, and limiting deposits from those sources to the

25 percent required under art. IX, sec. 15, Constitution of the State of Alaska; and providing for an effective date."

CHAIR ROKEBERG, as the sponsor, explained that current statute provides that revenues from mineral leases, bonuses, and federal leases entered into after January 1980 be deposited into the corpus of the permanent fund at a 50 percent level versus the constitutionally mandated level of 25 percent. He said that HB 3 simply reverts to the 25 percent constitutional mandate. He also explained that the general fund (GF) budget in fiscal year (FY) 1980 was in excess of \$4.07 billion, which he said is almost twice the present amount. He said that although the current statute was appropriately enacted at the time to direct a greater amount of mineral royalties from newer leases into the permanent fund, it is now time to repeal that statute because of the diminishing amount of GF revenue and the increased pressure to draw on the Constitutional Budget Reserve (CBR) in order to balance the budget. He added that fields such as Alpine, Badami, Northstar, Meltwater [Participation Area], Tarn, Liberty, and others - as well as any new future developments - currently all fall under the 50 percent allocation scheme.

CHAIR ROKEBERG mentioned that the handouts from Legislative Research illustrate revenue changes, and he also remarked that based on the "fall forecast," the fiscal note from the Department of Revenue (DOR) reflects an increase of \$40 million for FY 2002, \$43.7 million for FY 2003, \$40.2 million for FY 2004, \$38.6 for FY 2005, \$27.2 million for FY 2006, [and \$24.9 million for FY 2007]. He also mentioned that the DOR has submitted charts showing historic and projected income and production information. He surmised from one of the charts that although production from the older fields is declining, production from the new fields is allowing the total production levels to stay relatively the same through the year 2009.

CHAIR ROKEBERG mentioned again that HB 3 would replace the current 50 percent allocation level with a 25 percent allocation level. He also noted that the Alaska State Chamber of Commerce has submitted a letter of support of HB 3. He offered that HB 3 is the first step in any long-range financial plan that the state develops. He added that the impact of HB 3 on the permanent fund dividend (PFD) is de minimis because of the "five-year averaging," and will not be felt until 2006, according to a analysis by the Alaska Permanent Fund Corporation; at that time there will only be a \$10 decrease. He also pointed out that the PFD is estimated to go up in future years [beginning in 2007], which suggests that the vagaries of

the market are more important than any potential impact of HB 3. He estimated that with the adoption of HB 3, the state, over the next five years, will be able refrain from drawing between \$175 million and \$200 million in additional funds from the CBR to balance the budget. He also offered that HB 3 will enable [the legislature] to avoid any future taxation for the aforementioned amount.

Number 0632

REPRESENTATIVE BERKOWITZ offered the criticism that [the legislature] can already do what is proposed in HB 3; the legislature can appropriate money from the "earnings reserve" with a 21-member vote. On the more generic question of what is the best overall approach to managing "our" assets, he said that money in the permanent fund "does better" than money in the GF. He reported that money in the permanent fund has approximately an 8 percent return, if not more, as compared to 4 percent while in the GF. By looking at this income as fungible money, there is a difference between whether it's "parked" in the GF or it's parked in the earnings reserve. He said that there is a good argument that [the legislature] could simply appropriate this extra 25 percent from the earnings reserve of the permanent fund, now, and that there is no need to divert that "stream" from the permanent fund to the general fund. He added that although the aforementioned was a good academic argument, there are political realities to consider regarding the objective of HB 3.

CHAIR ROKEBERG offered the rejoinder that current statute requires that the additional monies be deposited into the corpus, or principal, of the permanent fund, instead of the earnings reserve. He opined that Representative Berkowitz's theory presupposes generation of earnings, which historically has occurred, but current market fluctuations make results more suspect for the coming year[s]. But for the amounts from the larger bond and real estate portfolio, [the legislature] is in the situation of realizing substantially less growth in those earnings. He remarked again that statute dictates additional monies go to the principal, and that because neither the legislature nor the people have agreed upon the expenditure of any funds for GF purposes from the earnings reserve, on a cash-flow basis, that money is "dead money."

REPRESENTATIVE BERKOWITZ countered that according to his recollection, the money does not go straight to the corpus; [the legislature] appropriates it to the corpus.

CHAIR ROKEBERG responded that the money goes straight to the corpus.

Number 0818

REPRESENTATIVE JAMES agreed that the money goes directly into the corpus of the permanent fund. Although she understood Representative Berkowitz's presentation, she said that there is a difference between having money available and having only the interest income of the money available. She said that the same argument could be given that [the legislature], with 21 votes, could take the estimated \$40 million and use it in the budget now; in fact, with 21 votes, [the legislature] could take enough money out of the earnings reserve to avoid taking any money at all out of the CBR. The legislature has not decided to do this, however, because it does not have a long-term plan. She added that all of these decisions - how "we" deal with the earnings reserve, deal with the PFD, deal with the CBR, and get enough money to keep from having less income than is spent - is part of a long-range plan.

REPRESENTATIVE JAMES explained that she has often said that she would not be voting for a part [of the plan] until she sees the whole thing; however, she added, HB 3 is the one exception because it makes a lot of sense to her. She also said that another item to carefully consider with regard to the long-term plan is how government spending is tending to far exceed income, and she voiced the concern that at the current rate of growth, the state may not be able to maintain a PFD for its citizens nor be able to tax its citizens enough to pay for needed services. She said again that HB 3 makes sense, particularly now that the state doesn't have enough money; although it was a good idea when the state had extra money, the extra [25 percent should no longer be placed into the corpus of the permanent fund]. She concluded by saying that she supported HB 3.

REPRESENTATIVE COGHILL said that [excessive] government spending is one of the reasons he voted not to report HB 3 out of the House State Affairs Standing Committee. He did, however, acknowledge that the money would probably gain more if it were in the permanent fund, and that having it in the permanent fund was perhaps a better way of making use of that money. He also said that there is no doubt that [the GF] budget is "hungry" for more money because of all the federal mandates and social programs that are being created but not scrutinized. He opined that another \$40 million is not going to satisfy those needs.

He said that although he is not in favor of HB 3, he will not vote to stop it.

Number 1025

CHAIR ROKEBERG said that although he understood some of Representative Coghill's concerns, he did not understand all of them, even though he considered himself to be extremely fiscally conservative and to be a major voice for the private sector. He said he believes that maintaining a higher balance in the CBR, by funding over 50 percent of the \$75 million increase in the FY 2002 GF budget, is responsible cash-flow management. He said that HB 3 is a prudent and immediate step that the legislature can take and which [could] be in effect by July 1. He added that funds from any future fields that come online at a 50 percent level would not replace the diminution of funds from current fields that are at the 25 percent level. He suggested that "all we're doing, is replacing [them] on a cash-flow basis."

REPRESENTATIVE COGHILL said that is one of the reasons why he will not hold HB 3 up, but he added that he thinks there has to be continuing discussion on the fact that "we are a lot bigger than we can afford."

REPRESENTATIVE JAMES said:

In the whole scheme of economics, I think we do need a lesson on this issue ... that the only way that we can ever pay for our needs in this state is to have more economic activity. And the only way we're going to get some more economic activity is to spend some money in the areas where you can create some. We, as a state, own everything in this state; so that means that it's not out there for the picking without us spending some money to get it picked. [The Department of Natural Resources (DNR), Department of Environmental Conservation (DEC), and Department of Fish and Game (ADF&G)] are some of the areas that we're being pretty skimpy on right now, and so we're discouraging any kind of economic activity.

The second reason why we're discouraging economic activity is because we have a hole in our budget: we're spending more money than we're taking in. And until we change that, people are going to be hesitant to bring money into this state because they know that

if we are going to tax anybody, we're going to tax the business, because we have a society who wants to pay nothing for anything - they just want things but don't want to pay.

So, I agree with the representative from my neighboring district that we certainly have to be cautious, and I am very distressed about the amount of money that we're spending this year because we haven't got any overall plan as to how we're going to get there; it doesn't even do us any good to get some new economic activity if we don't have some way of tapping into that with, like, a broad-based tax that will help us to fund schools, and roads, and police, and all those kinds of things that we'll need more of when we have more people. So I think that we really do need to have a lesson in economics, and maybe I could put on a workshop one of these days on this, Mr. Chairman, so that we can understand how we're going to get there - to be prudent and still make enough money to survive over the long term.

Number 1231

REPRESENTATIVE JAMES moved to report HB 3 out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HB 3 was reported from the House Judiciary Standing Committee.

REPRESENTATIVE JAMES further commented that the only way to really cut the budget, with regard to the way [Representative Coghill] wishes, is to be sure that every able-bodied person in this state has a good-paying job, and then there will not be a need for all of those social services that [the legislature] is paying for.

REPRESENTATIVE BERKOWITZ noted that [the legislature] has been cutting the budget and scrutinizing programs for a long stretch. In response to a question, he said that he has sat through plenty of budget debates, and he did not notice anyone coming forward with amendments to eliminate programs in their entirety; he did not notice those discussions as really being part of the conversation. He said he has heard a lot of people say that [the state] has too many programs; that there are a lot of things going on that folks really don't want; and that if [the legislature] looked just a little bit more closely, it would find items in the budget it could do away with. He said,

however, that he was still waiting for people to be more concrete with those proposals.

REPRESENTATIVE COGHILL said he appreciated those comments because he has spent a lot of time looking in order to come up with some proposals. He added that there are a lot of federal dollars driving many budget items, and that it is going to take some fortitude to deal with them.

REPRESENTATIVE BERKOWITZ remarked that "when those federal dollars dry up ... in the next couple of years, we're going to see what kind of hole we're really in."

CHAIR ROKEBERG commented that at the [Fiscal Policy Caucus], Commissioner Condon gave a presentation of the fall forecast. He said the presentation reflected a potential for a shrinkage of the state's domestic product - or the overall economy - if the state were to use various forms of taxation as opposed to using money from the earnings reserve account, which is currently in portfolios outside the state. He added that the irony of this is that [the legislature] is much better off using earnings reserve moneys rather than taxing, which is a fiscal policy that has a negative impact on the economy. He said that HB 3 avoids the issues surrounding taxation and the use of the earnings reserve, and is one small step towards saving money.

REPRESENTATIVE JAMES added that [adopting HB 3] is the prudent thing to do.

[HB 3 was reported from the House Judiciary Standing Committee.]

HB 132 - LIQUOR LICENSE APPLICANT CHECK/TRAINING

Number 1440

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 132, "An Act relating to the possession or distribution of alcohol in a local option area; requiring liquor license applicants to submit fingerprints for the purpose of conducting a criminal history background check, and relating to the use of criminal justice information by the Alcoholic Beverage Control Board; providing for a review of alcohol server education courses by the Alcoholic Beverage Control Board every two years; and providing for an effective date." [Before the committee was CSHB 132(L&C).]

Number 1463

HEATHER M. NOBREGA, Staff to Representative Norman Rokeberg, House Judiciary Standing Committee, Alaska State Legislature, presented HB 132 on behalf of the committee. She explained that HB 132 did three things with regard to bootlegging. For the application of the presumption that a person possesses alcohol with the intent to sell it, HB 132 decreases, by half, the amount of distilled spirits that a person may possess in [an alcohol-]restricted community. Also, HB 132 reduces, by half, the amount of distilled spirits that a package store may send any given person in an alcohol-restricted community during a calendar month. Finally, HB 132 changes the penalty for the illegal sale or transportation of alcohol to a local option community by reducing, by half, the amount of distilled spirits illegally sent to a community that results in a class A misdemeanor or a class C felony.

MS. NOBREGA also explained that another provision of HB 132 applies to the Alcoholic Beverage Control (ABC) Board, and requires fingerprinting of liquor license applicants for the purpose of submitting the fingerprints to the Federal Bureau of Investigation (FBI) for a national criminal history background check. Currently, all that is allowed by law is an in-state background check, and in order to seek background information nationwide, the FBI requires direct statutory authority. Last, Ms. Nobrega explained there is a provision in HB 132 that requires the ABC Board to review the alcohol server education course every two years, instead of every three years.

Number 1558

REPRESENTATIVE KOOKESH commented that it is not so much an issue of the amount of alcohol that people can ship into a "dry" community; instead, it is an issue of prosecution. He said that he knew of people in his community who have been caught shipping in alcohol for sale, but they never seem to be prosecuted. He added that while he supports the concept [of HB 132] and it looks good on paper, without the funds for the state to follow through on prosecutions, nothing, in reality, is being done [about the problem of bootlegging].

Number 1604

REPRESENTATIVE JAMES offered that the amounts allowed into a dry community - less than 6 liters of distilled spirits, 24 liters of wine, or 12 gallons of malt beverages - still seemed to her to be a lot.

CHAIR ROKEBERG explained that it is four cases of beer and two cases of wine, which is not a lot of alcohol for a month's period of time.

REPRESENTATIVE JAMES countered that it is a lot; she asked if this amount is for just one person's consumption.

CHAIR ROKEBERG explained that for the purpose of HB 132, it is the possession [of that amount] that [results in the presumption] of a violation. He noted that the same conversation took place in the House Labor and Commerce Standing Committee.

Number 1656

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), noted that the DOL was in support of HB 132. He went on to explain that the presumptive level of possession in HB 132 only applies in those municipalities that have banned the sale of alcohol, but have not banned the importation or possession of alcohol. Thus it is a question of how much alcohol a person can have in those areas before the DOL starts to presume that he or she is actually going to sell it. In areas that have banned possession [of alcohol], the amounts listed in HB 132 do not apply; the possession of any amount of alcohol is a violation. He noted that the recommendation [to lower the possession limits] was made by the Criminal Justice Assessment Commission (CJAC), which is a multi-agency commission that has met for the last couple of years, and of which Representatives Berkowitz and Mulder are members.

MR. GUANELI said he tended to agree with the point made by Representative Kookesh: the resources available for the investigation and prosecution of these cases are limited. He added, however, that a lot has changed in that regard in just the last month or so. Through U.S. Senator Stevens' office, the Department of Public Safety (DPS) was given a federal grant of approximately \$1.5 million, and this money will provide several additional state trooper investigators, as well as additional prosecutors. He explained that the enforcement emphasis over the last several of years has been focused on the point when the liquor is already in the village and a sale is taking place. Those cases were very difficult to investigate and prosecute because it was hard to find informants who could go into the villages and buy the liquor once it was already there. He added

that more recently, particularly now that the state troopers have more resources, the focus [of investigation and prosecution] has shifted to the places where liquor is sold and shipped into the villages, which means, largely, places in Anchorage. He noted that [the DOL and DPS] are getting better cooperation from the United States Postal Service (USPS) in stopping shipments, as well as getting continued good cooperation from the airlines and package stores.

Number 1794

MR. GUANELI said that a point relayed to him by prosecutors was that when the USPS (or other carrier) prevents alcohol from going to a dry village, the most the DOL can prosecute the sender for is an "attempt" to send alcohol. Thus crimes that would otherwise be prosecuted as felonies, had the alcohol actually arrived at the dry village, are dropped down to a misdemeanor level. He added that felony prosecution of bootlegging is important in that it allows more sentencing options to the court and provides that offenders be placed under probation. For this reason, the DOL would find it helpful if the laws relating to bootlegging were structured similarly to laws relating to narcotic offenses, whereby the attempt to send or transport alcohol to a dry village can be prosecuted at the same level as the prosecution of someone who successfully got alcohol to that location. To this end, Mr. Guaneli provided the committee with proposed Amendment 1, which reads as follows [original punctuation provided]:

***Sec. ____.** AS 04.11.499 is amended to read:

Sec. 04.11.499. Prohibition of importation after election. **(a)** If a majority of the voters vote to prohibit the importation of alcoholic beverages under AS 04.11.491(a)(4) or (5) or (b)(3) or (4), a person, beginning on the first day of the month following certification of the results of the election, may not knowingly send, transport, or bring an alcoholic beverage into the municipality or established village, unless the alcoholic beverage is sacramental wine to be used for bona fide religious purposes based on tenets or teachings of a church or religious body, is limited in quantity to the amount necessary for religious purposes, and is dispensed only for religious purposes by a person authorized by the church or religious body to dispense the sacramental wine.

(b) In this section,

(1) "bring" means to carry or convey, or to attempt or solicit to carry or convey;

(2) "send" means to cause to be taken or distributed, or to attempt or solicit to cause to be taken or distributed, and includes use of the United States Post Office;

(3) "transport" means to ship by any method, and includes delivering or transferring or attempting or soliciting to deliver or transfer an alcoholic beverage to any person or entity to be shipped to, delivered to, or left or held for pick up by, any person or entity.

*Sec. _____. AS 04.16.125(c) is amended to read:

(c) In this section,

(1) "common carrier" means a motor vehicle, watercraft, aircraft, or railroad car available for public hire to transport freight or passengers;

(2) "transport" has the meaning given in AS 04.11.499.

Delete Section 4 of the bill and replace it with:

*Sec. 4. AS 04.16.200(e) is amended to read:

(e) A person who sends, transports, or brings alcoholic beverages into a municipality or established village in violation of AS 04.11.499 is, upon conviction,

(1) guilty of a class A misdemeanor if the quantity of alcoholic beverages [IMPORTED] is less than 6 [12] liters of distilled spirits, 24 liters of wine, or 12 gallons of malt beverages; or

(2) guilty of a class C felony if the quantity of alcoholic beverages [IMPORTED] is 6 [12] liters or more of distilled spirits, 24 liters or more of wine, or 12 gallons or more of malt beverages.

MR. GUANELI explained that proposed Amendment 1 would give definition to certain words in current law in order that an attempt to violate the law can be prosecuted at the same level as an actual violation of the law.

Number 1884

REPRESENTATIVE JAMES, returning to the topic of amounts listed in HB 132 as they pertain to personal consumption, called those amounts absurd.

CHAIR ROKEBERG reminded Representative James that those amounts are for presumption of possession and/or shipment; thus records could be kept of someone shipping those amounts during a calendar month. He maintained that two cases of wine and four cases of beer is not a large amount. He used the example of a hunting party in a rural area taking four cases of beer with them, which he said was not at all unusual.

REPRESENTATIVE JAMES responded that she understood the concept of presumptive possession, but she countered that people should not take alcohol on hunting trips.

Number 1920

MR. GUANELI added that the House Labor and Commerce Standing Committee had considerable discussion on this same topic. The ultimate decision was that the presumptive level of "hard liquor" (distilled spirits) needed to be cut in half. Generally, wine and beer are not being bootlegged; the big profit was being made selling hard liquor.

CHAIR ROKEBERG noted that he had heard that a bottle of vodka can sell for \$75-80/quart.

REPRESENTATIVE KOOKESH interjected that that price was cheap; he had heard of a "fifth" [of hard liquor] selling for that price.

MR. GUANELI added that that was the typical price, but in some remote locations the price is considerably higher. On a case of hard liquor, the profit is easily several hundred dollars, or \$1,000/case.

REPRESENTATIVE JAMES asked why it is currently allowable to bring in 6 [liters] without [reaching the presumptive level].

Number 1996

REPRESENTATIVE BERKOWITZ noted that it was a misdemeanor versus a felony.

CHAIR ROKEBERG requested clarification.

MR. GUANELI explained that in areas that have banned sale but not importation or possession [of alcohol], the offense is to sell. House Bill 132 establishes the presumptive level if someone is selling. In reality, there is no limit to the amount a person may possess in those areas where possession is not illegal, but at some point, if the amount a person possesses is large enough, [DOL/DPS] is going to presume the alcohol is being sold. He added that current law already has distinctions regarding large/small amounts [of alcohol].

Number 2057

MR. GUANELI, returning to the topic of proposed Amendment 1, said that the accompanying handout presented common examples of scenarios that occur in bootlegging situations. In these examples, under current law, if an attempt to transport large amounts into a local option area fails, the crime drops from a class C felony to a class A misdemeanor. He went on to explain that proposed Amendment 1 would define terms so that bootleggers would still face the higher charge even if their attempt to commit the crime failed. Specifically, the terms of "send", "transport", and "bring" would be further defined to include "attempting" and "soliciting". He also explained that the current definition of "attempt" means that a person with intent to do something takes a substantial step towards its commission. He added that [with proposed Amendment 1] the DOL has covered the gamut of situations that arise in bootlegging scenarios. Also, he said that proposed Amendment 1 would solve the practical day-to-day problems noted by prosecutors, and would help solve some of the kinds of problems broached by Representative Kookesh with regard to prosecution.

MR. GUANELI clarified for Representative Rokeberg that the handout pertained to current law; because current law with regard to the terms of "send", "transport", and "bring" does not automatically include an "attempt", it must be specified [via proposed Amendment 1] that "attempt" is included. He added that current definitions in both narcotics and robbery laws include "attempt".

CHAIR ROKEBERG followed up this explanation by saying that law enforcement officials could then pursue a conviction rather than just settling for confiscation of the contraband. Chair Rokeberg asked Representative Kookesh what the price of vodka was in Angoon, which is a dry village.

Number 2285

REPRESENTATIVE KOOKESH responded that it was \$60/fifth of vodka and \$60/"half-rack" of beer. He added that a joke going around Angoon goes like this: "Do you know why you call a quart of alcohol a fifth in Angoon? Because there are only five drinks in it." He said this by way of explaining that in [dry villages], if a person is going to drink from a bottle in a group, that person tries to drink as much possible right then because the bottle won't come back around. This practice was a deciding factor in the decision made by residents to vote Angoon dry, but it has not helped because bootlegging is a thriving business in rural Alaska.

CHAIR ROKEBERG expressed the concern that as more pressure is put on bootleggers, the procurement of drugs, as opposed to alcohol, will become more prevalent. He said that it was his understanding that drugs, even "harder" drugs, were becoming more available throughout the state, even in small villages. He said he worried that the cost of buying drugs would become cheaper than buying bootlegged alcohol, thus shifting the problem from alcohol to drugs.

Number 2378

MR. GUANELI said that shifting to some additional drug use was a possibility. He noted that whenever someone is addicted to controlled substances of any kind, that person will have the desire to feed that addiction with something else [if the person's drug of choice becomes unavailable]. He added that he did not know the extent to which people addicted to alcohol will resort to another type of drug, but an increase in drug use in rural villages is occurring, although drugs are not as readily available. Mr. Guaneli mentioned that there might be an increase in the manufacture of homebrew, but he said the focus should be on trying to cut down both the easy access of bootlegged alcohol as well as the profits bootleggers make, while increasing the penalties that bootleggers are subject to.

CHAIR ROKEBERG commented that he thought interdiction would raise prices and profits [of bootlegged alcohol].

Number 2441

REPRESENTATIVE KOOKESH added that he had close friends who had quit drinking but had substituted marijuana use in its place.

REPRESENTATIVE BERKOWITZ asked if [the penalty] of forfeiture had been used much in the area [of bootlegging]; under AS 04.16.220, aircraft, vehicles, or vessels used to transport or facilitate transportation [of bootlegged alcohol] are subject to forfeiture.

MR. GUANELI responded that there are a lot of appropriate uses for forfeiture and this is one of them. He added that forfeiture in this instance would be distinct from forfeiture of a vehicle under the DWI laws. He also added, however, that it was his belief that most [bootlegged] liquor comes in through Alaska Airlines or some other commercial carrier.

TAPE 01-52, SIDE B
Number 2484

MR. GUANELI continued by saying that when people use the USPS or Alaska Airlines to transport contraband, the DOL does not take action against those entities or other commercial carriers.

CHAIR ROKEBERG announced that proposed Amendment 1 would be set aside until the rest of the testimony was heard.

Number 2420

DOUG GRIFFIN, Director, Alcoholic Beverage Control (ABC) Board, Department of Revenue, testified via teleconference and said that Section 3 of HB 132 is an expansion of the ABC Board's current practice of conducting criminal background checks on liquor license applicants. He noted that currently [background checks] are done just as a "pass through" from the ABC Board to the DPS; the checks are conducted, as required by state law, based on fingerprints, which gives a greater certainty that applicants are who they say they are. He said, however, that the ABC Board feels it would be in the public's best interest to expand and take into account today's more mobile society. He likened a more thorough background check to an ounce of prevention, so that when the ABC Board makes its determination on an applicant, it will have a nationwide criminal history [databank] at its disposal. To this end, federal law requires statutory authorization of the ABC Board to conduct nationwide background checks using the FBI databank. Mr. Griffin added that the cost of going after a "bad licensee" is in the tens of thousands of dollars, whereas not licensing that person to begin with would be more fiscally prudent. He noted that Linda Kesterson and Bill Roche were available at his office for questions.

REPRESENTATIVE JAMES said she assumed that there was a charge for getting the FBI report, and she asked if the application fee would be increased to include that cost.

Number 2293

MR. GRIFFIN answered that the additional cost of \$20-25 would be borne by the applicant, and that the report would take perhaps an additional ten business days to arrive. And while he acknowledged that "time is money" and is a point of concern with some applicants, he said that the ABC Board feels that extra time spent is well worth it in order to have the more thorough background check conducted.

Number 2270

CHAIR ROKEBERG commented that Mr. Griffin's testimony in the House Labor and Commerce Standing Committee indicated that some of the more thorough investigations conducted by the ABC Board have revealed applicants with stateside criminal records, and this information would not have shown up under the current background check procedures.

MR. GRIFFIN confirmed that that was an anecdotal example of why the ABC Board wanted to begin doing the more thorough background checks as a matter of course. He added that the ABC Board has no way of knowing how many current licensees would not have been issued licenses to begin with, because a more thorough background check would have revealed a criminal history. He also said, however, that the ABC Board, when considering an applicant's criminal history, treats every licensing question on a case-by-case basis; just because an applicant has a criminal history does not mean an automatic veto [of the application]. He said that in the case he was familiar with, a person from California was convicted of selling alcohol without a license, kidnapping for profit, and a couple of other serious charges. He said that that information came to the ABC Board serendipitously because that individual was employed by the Anchorage Police Department as an informant.

Number 2188

REPRESENTATIVE COGHILL asked what kind of response is given to the applicant once the background check is completed.

MR. GRIFFIN explained that if something comes up during the background check, the ABC Board meets with the applicant in executive session to discuss the incidents surrounding the conviction(s), and every possible step is taken to ensure the applicant's privacy. He added that based on the applicants criminal background, the ABC Board can deny the license transfer, put conditions on the transfer, or require additional background checks on a frequent basis. The ABC Board is not limited to just denying the license.

REPRESENTATIVE COGHILL noted that he'd asked the question because he wanted to know that the applicant could take part in the discussion with the ABC Board if a criminal history check warranted further scrutiny.

Number 2102

CHAIR ROKEBERG asked if the ABC Board had any objections to proposed Amendment 2, which removes Section 5 of HB 132 and reads as follows [original punctuation provided]:

Page 1, Line 4, after "Board;"
Delete:

**providing for a review of alcohol server
education courses by the Alcoholic Beverage
Control Board every two years;**

Page 3
Delete lines 4 through 6

Renumber remaining section accordingly.

CHAIR ROKEBERG further explained that proposed Amendment 2 would remove from HB 132 language that instructs the ABC Board to review the TAM [Techniques of Alcohol Management] course every two years instead of every three years.

REPRESENTATIVE BERKOWITZ asked why that language was in HB 132 to begin with.

CHAIR ROKEBERG responded that he thought inclusion of that language was a mistake.

Number 2079

REPRESENTATIVE JAMES asked if the language in Section 5 meant that the TAM course would be redesigned every two years instead of every three, or if it meant that the TAM course would be given every two years instead of every three years. She was concerned that if the latter, there might be people wanting to take the course sooner than once every three years.

MR. GRIFFIN explained that the ABC Board simply certifies any alcohol server training courses offered to ensure that they include the list of items required by Alaska law. Many of the courses are offered nationwide by associations in the hospitality industry, and the list of items that must be included in those courses is customized to fit Alaska law. Thus, Section 5 simply said that the ABC Board would review those courses every two years instead of every three years. The purpose of the review was to ensure that the courses that are offered stay current with Alaska law. With regard to the question of how often alcohol server training courses are offered, he said that some courses in the Anchorage area are offered on a weekly basis, and perhaps a little less frequently in other urban areas. He added that a challenge has been to offer training in more remote areas of Alaska, although the courses are not a responsibility of the state but are provided by different organizations. Again, he said Section 5 would simply require that the courses offered would be reviewed more frequently than they presently are. He added that the ABC Board did not have any strong feelings, one way or the other, about that change. Doing the review every two years would require more work on the part of the ABC Board, but anything that can be done in the area of prevention is considered time well spent.

Number 1962

CHAIR ROKEBERG said that he had put Section 5 in HB 132 to ensure that the alcohol server training courses are updated by a review of the ABC Board to include changes made by HB 132, but upon further reflection he'd determined that perhaps the statutory change would not really be worth the effort that the ABC Board would expend to enact Section 5.

REPRESENTATIVE BERKOWITZ referred to a recommendation by the Criminal Justice Assessment Commission (CJAC) to remove a statutory cap and increase wholesale license fees in order to fund increased enforcement of Title 4 actions. He asked Mr. Griffin for his thoughts on that recommendation.

MR. GRIFFIN said that the ABC Board did not have a position on that recommendation. He added that he thought the topic was somewhat along the lines of other discussions regarding alcohol taxes, which could be used to generate additional revenue so that additional alcohol-specific enforcement could be funded. He acknowledged that the ABC Board did have limited resources; there were three investigators and supervisors servicing the entire state, and the ABC Board is spread very thin. He said that he thought that the ABC Board could do more to assist law enforcement, both local and statewide, if more resources were available. He also said that he thought CJAC was approaching the issue from the point of trying to provide a funding source, rather than just demanding more enforcement; to that end, CJAC had recommended an increase in the wholesale license fees.

Number 1832

KACE McDOWELL, Cabaret Hotel Restaurant & Retailers Association (CHARR), testified via teleconference, first affirming for Chair Rokeberg that she had heard his comments about the proposed amendment [Amendment 2] to remove the "TAM [Techniques in Alcohol Management] stuff." She then reported that CHARR, like the ABC board, has no strong feelings either way about this. She added, "If the ABC board wants to review our product every two years, we'll certainly have it available for them." Noting that it would be more work for the ABC Board than for CHARR, she deferred to the board in that regard. In response to a further question from Chair Rokeberg, she indicated CHARR had just come up with a new program, with the TAM program, and therefore already had submitted its information during the three-year process.

Number 1800

CHAIR ROKEBERG asked Mr. Griffin whether, if there is a change in the curriculum, there is a requirement to submit it to the board anyway.

MR. GRIFFIN answered yes, if it is a substantial enough change. In the case of the TAM course that CHARR offers, it was a "stem-to-stern" revision; although the information was the same, [CHARR] took an approach that was different enough that [CHARR] wanted to make sure it also would meet the requirements set forth in regulations.

CHAIR ROKEBERG suggested the provision is a bit redundant, then.

Number 1731

ALVIA "STEVE" DUNNAGAN, Lieutenant, Division of Alaska State Troopers, Department of Public Safety (DPS), testified via teleconference. He specified that DPS supports the bill in an effort to give the department some better devices in order to try to control bootlegging and alcohol-related problems in Alaska. He said he hadn't seen Mr. Guaneli's amendment, but just listening to it, he believed it to be extremely positive from an enforcement aspect; he agreed that many times there are cases in which only a misdemeanor can be charged, although the offense is really a felony offense.

LIEUTENANT DUNNAGAN called attention to Chair Rokeberg's question regarding whether another market is being created for illegal substances. Lieutenant Dunnagan explained that illegal substances are being used more in rural Alaska than before, which he surmised to be generational. Furthermore, it is expensive. In Fairbanks or Anchorage, a person can buy an ounce of marijuana for about \$280; to get it out to the villages, however, it is made into joints that contain one-eighth of a gram, and the price rises to \$2,000 for the person who sells marijuana in the Bush. He questioned the concept that an increased emphasis on alcohol will increase the use of marijuana.

Number 1634

CHAIR ROKEBERG said this is so ironic: The areas that [the legislature] wants to protect, where there is little cash, have the biggest crises in this regard. He then noted that an e-mail received from Lieutenant Dunnagan on March 24 indicated 585.7 gallons of illegal alcohol were seized in the year 2000, and that with five new troopers, the hope is to increase that by 20-30 percent. He commented, "I hope you do better than that."

LIEUTENANT DUNNAGAN replied that he believes 25-30 [percent] is very conservative; he expressed the hope of doing far better.

Number 1570

BLAIR McCUNE, Deputy Director, Public Defender Agency, Department of Administration, testified via teleconference, noting that he hadn't seen Mr. Guaneli's proposed amendment [Amendment 1] either. He suggested the committee may want to consider that local-option laws making the importation of alcohol illegal are done by elections; what is in the mind of

the voters at the time of the election, with regard to what is legal or illegal relating to importation of alcohol, is a pretty important point. He asked: If the definition is changed, how does that affect the election that resulted in the illegality?

CHAIR ROKEBERG responded that the substance of the amendment "makes attempting to do so the criminal equivalent." He said that is the only substantive difference, and he believes the rest is just clarifying language.

MR. McCUNE replied that the law that makes it illegal, [AS] 04.11.499, says following certification of the results of the election, "may not knowingly send, transport, or bring an alcoholic beverage into the municipality or established village", followed by some exceptions regarding sacramental wine and so forth. He said that issue should be looked at carefully, as far as the amendment is concerned. He urged caution because of possible unintended consequences.

MR. McCUNE addressed Representative James' point that this is a lot of alcohol. He noted that people who come into Anchorage perhaps twice a year may use that opportunity to bring back alcohol [to a village], where it lasts for several months. He pointed out how expensive it is to ship alcohol by air freight, and suggested that if people cannot bring much in, they may rethink the wisdom or propriety of having their villages ban importation. He noted that the elections often are decided by just a few votes; in Barrow, for example, the community went "dry," but at a later election decided the opposite by a little more than half [the votes]. He suggested that villages shouldn't be pushed out of the more restrictive situation by making the laws too harsh.

Number 1350

CHAIR ROKEBERG commented that there is still a "more modest fiscal note."

MR. McCUNE responded that as Mr. Guaneli and Lieutenant Dunnagan had expressed, the Public Defender Agency, without any part of this funding, is "standing on the tracks looking at a train coming at us." He said he had tried to moderate the fiscal note to the policy of this bill. He commented:

Mr. Chairman, you asked us to check on whether we could get some of those funds, and I've talked to David Koivuniemi ... and Dan Spencer in the Department

of Administration, and they were checking with the Department of Public Safety and OMB [Office of Management and Budget] about that. But I don't think we've got the final word, but I think that this is all, as of now, in the governor's amended budget. And I don't know what could be changed here, right now, but we're looking into that as well.

Number 1286

REPRESENTATIVE JAMES noted that the Public Defender Agency represents people without any money to speak of, and that Mr. McCune is talking about "not wanting to push the envelope back so that people would change their mind and decide that it would be okay to have the sale of liquor in the community." Noting that she'd just heard how much money can be made [bootlegging], she asked who the typical person is that the Public Defender Agency would be representing in such a case.

MR. McCUNE said that is a good question. In his experience, there aren't "kingpins" in the bootlegging area generally; rather, it will be someone who makes some extra cash by fishing or firefighting, for example. Often it is young people who may pool resources and send someone to obtain alcohol for a party, for instance. That money tends to run out quickly, he remarked, and it really needs to be used for the rest of the year, to buy subsistence supplies and so forth. As far as the Public Defender Agency is concerned, Mr. McCune said alcohol in rural Alaska causes an untold amount of misery; he cited the Barrow example as one of the most striking, noting that when the community went dry, his agency's caseload dropped considerably, as did admissions to the hospital, for example. He said on the one hand, his agency sees the problems from substance abuse, but they do represent people who are charged with these crimes.

Number 1118

LIEUTENANT DUNNAGAN said he agrees with Mr. McCune that probably the lion's share of bootleggers in the villages do it when they can, when they have the money. However, there are sophisticated networks of marketers, working out of urban areas with family members to send money, alcohol, and narcotics back and forth on a regular basis. He noted that he used to be in the drug-enforcement unit in Fairbanks, which he supervised for two years; there were several substantial key players within the villages who used a fairly sophisticated network of family and suppliers to do that.

CHAIR ROKEBERG asked whether the interdiction will focus on these "organized crime families of bootleggers" who will not be hiring public defenders.

Number 1040

LIEUTENANT DUNNAGAN replied that he has nothing to do with whom they hire; when somebody is charged with a crime, that person goes into court, fills out a report of indigence, and swears to that; regarding what sort of investigation goes into that, he couldn't say, but if the court sees that the documentation supports the assertion that the person doesn't make a lot of money, the court will appoint a public defender. He added that a lot of the money from bootleggers and drug dealers is hidden money and not necessarily claimable - or else a person won't claim it.

CHAIR ROKEBERG suggested that wealthy individuals get free attorneys in that instance, although it isn't always the case.

LIEUTENANT DUNNAGAN agreed it probably happens once in a while.

Number 0981

CHAIR ROKEBERG, noting that there were no further testifiers, closed the public hearing.

Number 0972

CHAIR ROKEBERG made a motion to adopt Amendment 1 [text and discussion provided previously].

REPRESENTATIVE COGHILL objected for discussion purposes. He asked if the change encompassed by Amendment 1 would affect other imported items.

MR. GUANELI responded that Amendment 1 would not affect anything else. He also explained that the last portion of Amendment 1, regarding Section 4 of HB 132, pertained to the penalty of both importing and attempting to import alcoholic beverages. He said that using the language in Amendment 1 was the simplest way to effect that change.

REPRESENTATIVE COGHILL removed his objection.

Number 0878

CHAIR ROKEBERG noted that there were no further objections to Amendment 1. Therefore, Amendment 1 was adopted.

Number 0868

CHAIR ROKEBERG made a motion to adopt Amendment 2 [text and discussion provided previously]. There being no objection, Amendment 2 was adopted.

Number 0833

REPRESENTATIVE JAMES moved to report CSHB 132(L&C), as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 132(JUD) was reported from the House Judiciary Standing Committee.

CHAIR ROKEBERG called an at-ease from 2:29 p.m. to 2:31 p.m.

HB 158 - CRITERIA FOR REGULATIONS

Number 0807

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 158, "An Act relating to the criteria for the adoption of regulations and to the relationship between a regulation and its enabling statute; and providing for an effective date."

Number 0791

REPRESENTATIVE LESIL MCGUIRE, Alaska State Legislature, sponsor, suggested that the committee hear testimony on HB 158 and then hold it over the interim so that various concerns regarding unintended results could be addressed. She explained that nationwide review of rules and regulations began back in the 1930s and reached a peak in the 1970s when government at both the federal and state levels began to grow astronomically. Alaska was a territory, and thus the powers among the executive, legislative, and judicial branches were conceived a little differently; at that point in time, folks wanted to make sure that the governor had the ability to represent the state's views in a high-powered fashion, so the executive branch was vested with stronger powers than the average state executive branch would have been. At that point in time, there was skepticism of the legislature. Later down the line, Alaska followed a trend

evidenced in a lot of other states of putting a couple of different safeguards into its statutory framework. One was the creation of a regulation review committee, and the second was a statute that would allow the legislature, through a concurrent resolution, to repeal any regulations that it found to be inconsistent with legislative intent.

REPRESENTATIVE McGUIRE went on to explain that in 1980, the Alaska Supreme Court - in the A.L.I.V.E. Voluntary decision - ruled that [this statute] was unconstitutional on the basis that it did not comply with the presentment requirement because it essentially allowed other statutes to be amended without the changes first being presented to the governor in the regular fashion. She added that there were 11 other states at that time with similar provisions, and therefore Alaska was not alone in its feelings of frustration over the issue.

REPRESENTATIVE McGUIRE also explained that the U.S. Supreme Court - in INS v. Chadha - ruled that the veto power was a violation of powers on the federal level; although that case didn't have a direct impact on Alaska, she added, the result was clear, and in the years that followed INS v. Chadha, nine other states with a similar provision had it ruled unconstitutional. In two states - Idaho and New Hampshire - their supreme courts upheld the power to veto by resolution; their basic reasoning was that the separation of powers in those states charges only the legislative branch with the power to make laws, while their executive branches have only the power to execute those laws, and that these two branches of government were distinct and different. A further aspect of their rulings is that they determined that rules from administrative agencies actually had a lesser power - a lesser effect - than the laws made by the legislatures. Therefore, in Idaho and New Hampshire the ability to repeal by resolution is alive and well, and was ruled perfectly constitutional by their courts.

Number 0521

REPRESENTATIVE McGUIRE said that in the nine other states that had their laws regarding veto by resolution overturned, all of them, with the exception of Kansas, have taken some other remedial step in response. In a brief overview of the remedial steps the other states took, she explained that in Connecticut, the voters - via the state constitution - gave the legislature the ability to veto by regulation (in Alaska, this option has been twice rejected by the voters). In West Virginia, they created a system whereby state agencies don't have the power to

promulgate rules without first submitting them to the legislature (she noted that this is similar to the concept in HB 158 in that the burden of proof comes through the legislature). She also explained that in West Virginia, after submitting the proposed regulations to the legislature, the legislature in turn must enact a statute that authorizes the regulations to go into law. She recounted that Michigan is doing something similar to what is proposed in HB 158 in that if the regulation review committee - which Alaska already has - disapproves of a rule, it cannot go into effect unless there is a two-thirds vote by the legislature. She added that Michigan, via the regulation review committee, has powers to suspend any rule during the interim, and the rule/regulation would then have to come up for full review during the regular legislative session. She explained that in Kentucky, any regulation that comes before the regulation review committee and is found to be deficient will go into effect, but only until the start of the next legislative session, and thus has a "shelf-life" of one year.

REPRESENTATIVE McGUIRE remarked that Alaska is one of the very few states that has done nothing to put some sort of check on the [administrative] agencies' ability to interpret state laws and make additional laws via regulation. And although she acknowledged that the agencies have done a good job, she said she thinks that the situation in Alaska borders on being unconstitutional. The legislature is the body charged with making laws, and although that authority can be delegated, she added that she thinks it was anticipated that this authority would be narrowly delegated, and that there would be some overview, or check, on the agencies' power.

REPRESENTATIVE McGUIRE noted that other states are experimenting with the concept of "sunsetting" whereby regulations go into effect without any input from the legislature but they expire every two years. Some states require "pre-submission," she added, with a vote of the legislature before adoption. She also noted that many other states have a regulation review committee, as Alaska does, but the difference is that the committees in these other states actually have the power to do something. Alaska's Joint Committee on Administrative Regulation Review [which she chairs] "has no power to do anything," she explained, and according to a legal opinion, "for all intents and purposes is nonexistent." Alaska's regulation review committee can comment on regulations and review them, but "it really means nothing," she said.

REPRESENTATIVE McGUIRE, with regard to the other states that have regulation review committees that do have the power to do something, noted that in some states, the committee has the ability to void a regulation; in many states, the committee has the ability to block adoption pending review; in other states, the committee sends the regulation over to the actual committee that has subject-matter jurisdiction in order that it may review the regulation; and in a lot of states there is the ability to object formally to a regulation and thus transfer the burden back to the agency.

REPRESENTATIVE McGUIRE, in sum, said that Alaska has done nothing since the A.L.I.V.E. Voluntary decision; in fact, existing statute makes reference to an annulment power that Alaska no longer has. Alaska has made attempts, throughout the years, she explained, to get a constitutional power on the ballot, but those attempts have failed. She added that there have been attempts on the part of some legislators to get pilot programs into place that would allow for more public comment and response, but those attempts also have failed. Sunsetting has failed, as has any attempt to create a real power in the regulation review committee.

Number 0166

REPRESENTATIVE McGUIRE, with regard to the question of "where do we go from here," suggested that "we need to go somewhere." She said that she has had numerous people come to her office - ranging from administrative folks to people in industry - who have expressed likes for certain aspects of HB 158 and dislikes for other aspects of it. She opined that no one she has talked with disagrees with the fact that something probably needs to be done. She expressed a willingness to work on the issue of restoring a balance with regard to regulations, whether something can be accomplished over the interim or over the next couple of years. She said, for the record:

The reason why I introduced this, and the reason why I think it's important that we have something in place, is for the public; the public has the right and the ability to elect their legislative officials - the people who make laws - and what we have done is (in my opinion) negligently allowed administrative agencies to make laws, proliferate ... [regulations] that the public feels they have no control over. They might be a small businessman or [business]woman who [dislikes] the [regulation]; they can comment during the public

process. But what happens if the agency doesn't like their public comment? Well, really, nothing. So, they come to us, as their elected officials, and they ask for us to do something; but the political will is very strong.

REPRESENTATIVE McGUIRE recounted the following case in point. Just this year, the regulation review committee had a case that dealt with "on-bottom mariculture." The committee received a lot of public comment from folks who felt as if their views, in many cases, were not even listened to by the Alaska Department of Fish and Game (ADF&G). The very next morning the lieutenant governor signed the proposed regulations into law.

TAPE 01-53, SIDE A
Number 0001

REPRESENTATIVE McGUIRE continued by saying that regardless of whether she disagreed with the regulations, what she had wanted to do was give the public an opportunity to comment on the proposed regulations. Currently, the public is left with being required to present their views "to the very governor who hires the very commissioners who promulgate the very regulations that they disagree with"; she opined that this doesn't make very much sense. She offered that HB 158 may have some unanticipated consequences, and that she certainly didn't wish to create further problems. She said that her goal is to help the hardworking men and women of Alaska, not to hurt them, and that she hopes to get something in place that will allow the public to have a greater say and that will restore the law-making power to the legislature, at least somewhat more so.

REPRESENTATIVE JAMES commented that she understood the sponsor's frustration, and she pointed out that a simple solution would be that when the legislature creates a statute, if it wants an agency to write regulations, it must specifically state so in that particular statute. In this way, the onus is placed on [the legislature] to make statutes specific with regard to regulations.

CHAIR ROKEBERG suggested that the regulation review committee review the Administrative Procedure Act (APA) itself, and possibly look at making changes within it to ensure more public input. He also suggested that if private industry will support it, [the legislature] could again introduce a constitutional amendment that would nullify the A.L.I.V.E. Voluntary case. He noted, however, that money would have to be spent to educate the

public on the separation of powers issue and that [the legislature] has lost power and is not simply "trying to grab it back, if you will."

Number 0220

DEBORAH BEHR, Assistant Attorney General, Legislation and Regulations Section, Civil Division (Juneau), Department of Law (DOL), explained that she has been providing this function for DOL for about ten years, and that she would be delighted to work with the sponsor and any committee that wants to go forward and look at the regulations process; it is a very complex area of law that can result in a lot of unintended consequences and a lot of fiscal notes. She noted that there were some aspects of the APA that would be very interesting to look at, such as how to deal with the Internet and how it interfaces with getting the information across to the public; she offered that the statutes currently don't really cover that issue well.

MS. BEHR noted that a couple of years ago she and Representative James had worked on the issue of negotiated rule making, and although there have been some responses back on that subject, it, too, "could use some fine-tuning." She said she agrees with the sponsor that HB 158 has unintended consequences, but she offered to hold those comments at this time since HB 158 will be reviewed during the interim. She said if the committee wished, she would be willing to provide a "101" on regulations at the committee's pleasure. She again noted that although the administration does not care for HB 158, she would be delighted to work on issues to improve the administrative process.

Number 0357

REPRESENTATIVE COGHILL made a motion to adopt the proposed committee substitute (CS) for HB 158, version 22-LS0578\F, Bannister, 3/26/01, as a work draft. There being no objection, Version F was before the committee.

CHAIR ROKEBERG noted that the committee has received written testimony from Stanley T. Foo of the Alaska Miners Association, Inc.; Tadd Owens of the Resource Development Council for Alaska, Inc.; [and Judith Brady of the Alaska Oil and Gas Association]. He also noted that Charlotte McCabe had concerns regarding HB 158 but wished to hold her comments for the time being.

Number 0518

ROBERT B. STILES, President, Resource Development Council (RDC) for Alaska, Inc., testified via teleconference and gave two examples of problems with HB 158. First, it certainly throws into doubt the ability of the agency to use things such as site-specific criteria, particularly if it is not allowed within the individual statutes authorizing the program where that's applied. And for a second example, he said that it certainly throws into question the state's primacy regarding federally mandated programs such as the surface coal mining program - a program that is changing constantly. He offered that it is not unusual to have to change the regulations within that program once or twice a year, and under HB 158 as drafted, all of those regulations - some 200 pages of them - would have to be in statute in order to be in compliance with HB 158; additionally, any changes to those regulations would have to occur at the legislative level. He said he suspected that the legislature is not terribly interested in writing regulations, which HB 158 would require.

Number 0681

JANICE ADAIR, Director, Division of Environmental Health, Department of Environmental Conservation (DEC), testified via teleconference and said in response to questions that if HB 158 were to pass, the DEC would not be able to use site-specific criteria would not be allowed in the promulgation of regulations. She acknowledged that currently, for example, the DEC could make a regulation that allowed for the discharge water to be no dirtier or cleaner than the receiving water.

Number 0704

CHAIR ROKEBERG announced that the public hearing on HB 158 was closed, and that HB 158 would be held over.

ADJOURNMENT

Number 0784

CHAIR ROKEBERG [recessed] the House Judiciary Standing Committee meeting at 3 p.m. to a call of the chair on 4/3/01 for the purpose of again hearing HB 4.